

ISSUED MARCH 6, 1998

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD  
OF THE STATE OF CALIFORNIA

|                                   |   |                          |
|-----------------------------------|---|--------------------------|
| ERNIE DAROZA                      | ) | AB-6834                  |
| dba Ernie's Lounge                | ) |                          |
| 180 Eureka Square Shopping Center | ) | File: 48-171933          |
| Pacifica, CA 94044,               | ) | Reg: 96037512            |
| Appellant/Licensee,               | ) |                          |
|                                   | ) | Administrative Law Judge |
| v.                                | ) | at the Dept. Hearing:    |
|                                   | ) | Michael B. Dorais        |
|                                   | ) |                          |
| DEPARTMENT OF ALCOHOLIC           | ) | Date and Place of the    |
| BEVERAGE CONTROL,                 | ) | Appeals Board Hearing:   |
| Respondent.                       | ) | December 3, 1997         |
|                                   | ) | San Francisco, CA        |
|                                   | ) |                          |

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Ernie Daroza, doing business as Ernie's Lounge (appellant), appeals from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> which conditionally revoked his license for allowing an unlicensed person to assume the rights and duties of a licensee under appellant's license, being contrary to the universal and generic public welfare and morals provisions of the California Constitution, article XX, §22, arising from a violation of Business and Professions Code §§23300,

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<sup>1</sup>The decision of the Department, dated February 27, 1997, is set forth in the appendix.

23355, and 24200, subdivisions (a) and (b).

Appearances on appeal include appellant Ernie Daroza; and the Department of Alcoholic Beverage Control, appearing through its counsel, Robert Murphy.

#### FACTS AND PROCEDURAL HISTORY

Appellant's on-sale general public premises license was issued on June 14, 1985. Thereafter, the Department instituted an accusation against appellant charging that appellant allowed an unlicensed person to exercise the exclusive rights and privileges under appellant's license, a circumstance commonly referred to as an "undisclosed owner."

An administrative hearing was held on January 29, 1997, at which time oral and documentary evidence was received. At that hearing, testimony was presented concerning the allegations of the accusation. Subsequent to the hearing, the Department issued its decision which determined that appellant had violated the statutes involved, conditionally revoked the license and allowed appellant a 180-day period in which to transfer the license to a person acceptable to the Department.

Appellant thereafter filed a timely notice of appeal. Written notice of the opportunity to file briefs in support of appellant's position was given on July 16, 1997. No brief has been filed by appellant. We have reviewed the notice of appeal and have found insufficient assistance in that document which would aid in review.

The Appeals Board is not required to make an independent search of the record for error not pointed out by appellant. It was the duty of appellant to show to the Appeals Board that the claimed error existed. Without such assistance by

appellant, the Appeals Board may deem the general contentions waived or abandoned. (Horowitz v. Noble (1978) 79 Cal.App.3d 120, 139 [144 Cal.Rptr. 710] and Sutter v. Gamel (1962) 210 Cal.App.2d 529, 531 [26 Cal.Rptr. 880, 881].)

However, appellant appeared before the Appeals Board during the oral argument hearing and explained that following a disruptive divorce action and having a large debt assessed against him by the U.S. Internal Revenue Service [RT 22, 28], a friend offered, and thereafter loaned appellant, sufficient funds to pay his debts and place his life and business in order. Appellant, apparently without the assistance of an attorney to aid in securing the debt properly, gave the lender an interest in the premises' license [RT 23-24, 27].

The Appeals Board, over the years, has seen many such acts, some intentional deeds to thwart the laws that prohibit "hidden ownership" in a licensed premises, and a few matters, such as the instant case when the parties attempt to transfer an ownership interest with innocent intent

### CONCLUSION

In the record before us, a colloquy occurred between the administrative law judge and counsel for the Department in which the penalty was discussed. During that discussion, counsel for the Department advised the administrative law judge that the Department was willing to allow appellant to transfer the license to himself, under the terms of the recommended penalty.

At the oral argument hearing before the Appeals Board, counsel for the

Department advised the Board that the Department was willing to allow application by appellant under the terms of the Department's decision's penalty order, and grant that application so that sole ownership would be reinvested in appellant without the taint of the hidden owner. With those concessions in mind, the Appeals Board feels the decision of the Department to so transfer, is a just conclusion to this case.

The decision of the Department of Alcoholic Beverage Control is affirmed.<sup>2</sup>

BEN DAVIDIAN, CHAIRMAN  
RAY T. BLAIR, JR., MEMBER  
JOHN B. TSU, MEMBER  
ALCOHOLIC BEVERAGE CONTROL  
APPEALS BOARD

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<sup>2</sup>This final decision is filed in accordance with Business and Professions Code §23088, and shall become effective 30 days following the date of the filing of this final decision as provided by §23090.7 of said code.

Any party may before this final decision becomes effective, apply to the appropriate district court of appeal, or the California Supreme Court, for a writ of review of this final decision in accordance with Business and Professions Code §23090 et seq.